

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

\* \* \*

NEWMARK GROUP, INC., G&E  
ACQUISITION COMPANY, LLC, and BGC  
REAL ESTATE OF NEVADA, LLC,

Plaintiffs,

v.

AVISON YOUNG (CANADA) INC.;  
AVISON YOUNG (USA) INC.; AVISON  
YOUNG-NEVADA, LLC, MARK ROSE,  
THE NEVADA COMMERCIAL GROUP,  
JOHN PINJUV, and JOSEPH KUPIEC; DOES  
1 through 5; and ROE BUSINESS ENTITIES  
6 through 10,

Defendants.

Case No. 2:15-cv-00531-RFB-EJY

**ORDER**

Before the Court is Defendants' Renewed Motion for Leave to File Exhibits Under Seal.  
ECF No. 348. No response to this Motion was filed by Plaintiffs.

As the party seeking to seal a judicial record, Defendants must meet their burden of  
overcoming the strong presumption in favor of access and public policies favoring  
disclosure. *Kamakana v. City and Cnty. of Honolulu*, 447 F.3d 1172, 1178-79 (9th Cir. 2006)  
(holding that those who seek to maintain the secrecy of documents attached to dispositive motions  
must meet the high threshold of showing that "compelling reasons" support secrecy). "Many courts  
have applied the compelling reasons standard to . . . temporary restraining orders." *Ctr. for Auto  
Safety v. Chrysler Group, LLC*, 809 F.3d 1092, 1096 n.2 (9th Cir. 2016) (collecting cases); *see also*  
*Selling Source, LLC v. Red River Ventures, LLC*, No. 2:09-cv-01491-JCM-GWF, 2011 WL  
1630338, at \*5 (finding requests for preliminary injunctive relief should be treated as dispositive  
motions for purposes of sealing court records) (D. Nev. Apr. 29, 2011). However, where a party  
seeks to seal documents attached to a non-dispositive motion, the "public policies that support the  
right of access to dispositive motions . . . do not apply with equal force . . ." *Kamakana*, 417 F.3d  
at 1179 (citation omitted).

1           The mere fact that the production of records may lead to a party's embarrassment,  
2   incrimination, or exposure to further litigation will not alone compel the court to seal its  
3   records. *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1136 (9th Cir. 2003). Compelling  
4   reasons require a demonstration of something more, such as when court files have become a vehicle  
5   for improper purposes, including use of records to gratify private spite, promote public scandal,  
6   disseminate libelous statements, or circulate trade secrets. *Nixon v. Warner Commc'ns*, 435 U.S.  
7   589, 598 (1978).

8           The Court has considered the Motion and the documents sought to be sealed. The Court  
9   finds that consistent with its Order, ECF No. 346, Exhibit 3 contains confidential and/or proprietary  
10   business information. Therefore, there is compelling reason to grant Defendants' Motion as to  
11   Exhibit 3 (ECF No. 348-1).

12           Also consistent with the Court's Order, ECF No. 346, Exhibit 10, an email chain between  
13   counsel for Plaintiffs and counsel for Defendants, contains no information that warrants sealing this  
14   document. As such Exhibit 10 (ECF No. 348-2) shall be unsealed.

15           Defendants' Exhibit 12 contains an email to a court in Cook County, Illinois, with heavily  
16   redacted documents. The redactions were as received by Defendants from Plaintiffs in the Illinois  
17   action. The substantial redactions eliminate the disclosure of any potentially confidential business  
18   information or information potentially protected by the attorney client privilege or the attorney work  
19   product doctrine. As such, there is no basis for sealing Exhibit No. 12 (ECF No. 348-3).

20           Defendants' Exhibit 13 contains a single page of a deposition that contains no privileged or  
21   confidential information. As such, there is no basis for sealing Exhibit 13.

22           Accordingly, IT IS HEREBY ORDERED that Defendants' Motion for Leave to File Exhibits  
23   Under Seal (ECF No. 348) is GRANTED in part and DENIED in part.

24           IT IS FURTHER ORDERED that Exhibit 3 (ECF No. 348-1) shall remain sealed.  
25  
26  
27  
28

1 IT IS FURTHER ORDERED that Exhibits 10, 12, and 13 contain no privileged or  
2 confidential information, and nothing the Court can discern that is potentially privileged or  
3 confidential. As such Exhibit 10, 12, and 13 (ECF Nos. 348-2, 348-3, and 348-4, respectively) are  
4 unsealed.

5 DATED: May 11, 2020

6  
7   
8 ELAYNA J. YOUCHAH  
UNITED STATES MAGISTRATE JUDGE  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28